HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 6, 2013
83rd Legislature, Number 67
The House convenes at 10 a.m.
Part One

Seventy-three bills and two joint resolutions are on the daily calendar for second-reading consideration today.

The bills on the Constitutional Amendments and General State calendars analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Seven postponed bills — HB 2038 by Dukes, et al., HB 2712 by Perez, et al., SB 1251 by Carona (Villarreal), HB 996 by Giddings, HB 990 by S. Thompson, HB 194 by Farias et al., and HB 416 by Hilderbran — are on the supplemental calendar for second-reading consideration today. (The House is considering SB 1251 at second reading in lieu of HB 2315 by Villarreal, which was analyzed by the HRO on May 2.) The bill analyses are available on the HRO website at www.hro.house.state.tx.us/BillAnalysis.aspx.

Bill Callegari
Chairman
83(R) – 67

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, May 6, 2013
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Part One

SUBJECT: Allowing extension of exemption from inventory taxes for aircraft parts

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, N. Gonzalez, Ritter, Strama

0 nays

2 absent — Eiland, Martinez Fischer

WITNESSES: For — John Kennedy, Texas Taxpayers and Research Association

Against — (*Registered, but did not testify:* Windy Nash, Dallas Central Appraisal District)

BACKGROUND: Texas Constitution, Art. 8, sec. 1-j and Tax Code, sec. 11.251 exempt from ad valorem taxation "Freeport" property that is located in Texas temporarily. Eligible Freeport property includes goods, wares, merchandise, and other tangible personal property, including aircraft and aircraft parts used for maintenance or repairs by certified air carriers, and ores, other than oil, natural gas, and other petroleum products. To be eligible for the exemption, property must be acquired in or imported into Texas for export; detained for assembly, storage, manufacturing, processing, or fabrication; and shipped out of Texas no later than 175 days after acquisition or importation.

DIGEST: HJR 133 would propose an amendment to the Texas Constitution, Art. 8, sec. 1-j to authorize the governing body of a political subdivision to extend, to 730 days after being imported or acquired, the date when aircraft parts with a Freeport exemption had to be transported outside of the state. An extension would apply only to the adopting political subdivision.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment to authorize a political subdivision of this state to extend the number of days that aircraft parts that are exempt from ad valorem taxation due to their location in this state for a temporary period may be located in this state for purposes of qualifying for the tax exemption. "

If approved at the election, the amendment would take effect January 1, 2014.

SUPPORTERS SAY:

HJR 133 appropriately would provide the Constitutional authorization necessary to allow an appraisal district board to extend the so-called "Freeport exemption" on inventory taxes in the state to certain aircraft parts to 730 days (two years).

This measure, which would be totally permissive for local taxing entities, would accommodate the particular nature of the specialized aircraft parts industry. Airplane parts are expensive and, when needed, must be shipped to a customer with haste. However, since requests for special parts are rare, inventory often sits on the shelves prior to sale for longer than in other industries. It is not unusual for parts to sit in a warehouse for 600 days.

Texas is one of a small number of states that assesses a property tax on inventory. Certain Freeport goods that are in the state for no longer than 170 days and meet other criteria under current law are exempt from this tax. While aircraft parts are granted a Freeport exemption under current law, the maximum period is of insufficient length for many airplane part manufacturers. For example, Aviall, which is a provider of aircraft parts and related support services located in Irving, Texas, is considering opening a second warehouse in Texas. The Texas location is one among a few sites around the country under review. Extending the Freeport exemption to two years could be a determining factor in Aviall's decision regarding where to open the new warehouse.

The proposed tax exemption authorized by HJR 133 has all the major elements that the Legislature has looked to when deciding whether to grant similar tax exemptions — it would promote economic development, it would have a proven positive impact, and it would be totally at the option of the local government granting the exemption. To guard against any abuse, the bill also would cap the extension at 730 days before the parts had to be shipped out of state. Measuring all proposed tax exemptions against these criteria would prevent the creation of a slippery slope caused by other industries requesting tax breaks that did not offer the same potential benefits to the state.

OPPONENTS

HJR 133 would allow an appraisal district to extend a Freeport exemption

SAY:

for a certain group selling goods for certain purposes. Singling out one group for a tax exemption, even for a meritorious purpose, raises issues of uniformity in taxation. If the extension is authorized for aircraft parts, similar industries that make specialized parts and have a high portion of idle inventory will seek a similar extension. The Legislature would have trouble giving similar industries a principled explanation for why they should not be granted the same extension as those in the business of selling aircraft parts.

HJR 133, and its enabling legislation, HB 3121 by Harper-Brown, would have an unknown fiscal impact on the state by reducing funds available for education funding formulas, as well as for local governments. The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue coming in to the state that is not absolutely necessary should be tabled.

OTHER OPPONENTS SAY:

Instead of granting extensions to the Freeport exemption, the Legislature should consider eliminating the antiquated and punitive inventory tax. Very few states have retained inventory taxes to this day, and the fact that Texas still assesses one puts businesses here at a competitive disadvantage. The state could greatly enhance its appeal to many inventory-heavy businesses by repealing the dated and unnecessary tax.

NOTES:

The Legislative Budget Board estimates the bill would create an unknown cost to the state through the operation of the school finance formula.

The fiscal note estimates the cost to the state for publication of the resolution would be $108,921.

The enabling legislation for HJR 133, HB 3121 by Harper-Brown, has been set for floor debate today on the general state calendar.

SUBJECT: Allowing property tax exemption for owners leasing to a school facility

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Ritter, Strama

0 nays

1 absent — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify:* Rodrigo Carreon; Brent Connett, Texas Conservative Coalition; Eric Glenn, Texas Charter School Association; Joseph Riggs, Responsive Education Solutions; Addie Smith, Texas Charter Management Organizations; Justin Yancy, Texas Business Leadership Council)

Against — (*Registered, but did not testify:* Dick Lavine, Center for Public Policy Priorities)

BACKGROUND: Texas Constitution, Art. 8, sec. 2(a), requires all occupation taxes to be equal and uniform upon the same class of subjects within the limits of the authority levying the tax. The Constitution allows the Legislature to exempt certain uses of property from taxation, such as any public property used for a public purpose.

DIGEST: HJR 86 would propose an amendment to the Texas Constitution, Art 8., sec. 2(a), to allow the Legislature to exempt from ad valorem taxation any real property that was leased to a person for use as a qualified nonprofit school for educational purposes.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment authorizing the legislature to exempt from ad valorem taxation real property leased to certain schools organized and operated primarily for the purpose of engaging in educational functions."

If approved at the election, the amendment would take effect January 1, 2014.

SUPPORTERS SAY:

HJR 86 would provide the constitutional authorization necessary to fix an inequality in tax law that burdens small private and charter schools.

Under current law, charter and private nonprofit schools are exempt from having to pay property taxes. However, this exemption applies only if a school is able to purchase a property in its name. Many small charter and private schools that have a tax exemption are unable to finance the purchase of a property and are thus left with only the option of leasing space. Unfortunately, assuming a lease results in the school having to pay property taxes indirectly, as the property owner passes the cost of paying the taxes to the school.

HJR 86 would allow for the creation of a method to transfer, in effect, a property tax exemption to a charter or private school that leased space from an individual. Under HB 1360, the enabling legislation for the amendment, the owner would have to certify the market value of the property and then indicate the reduction in rent that the school enjoyed.

Following the certification, the owner would then receive a property tax exemption for the amount of the reduced rent. This would generate a savings to the property owner that would be passed on to the school. Money that schools must pay toward taxes is diverted from teacher salaries, improved technology, curriculum expansion, and other critical items.

Charter schools, in particular, are at a distinct disadvantage compared with public schools when it comes to facilities funding. They are not allowed to levy taxes to pay for their facilities and are not eligible for programs that provide state funding to help eligible school districts with facilities costs. HJR 86 would allow the Legislature to enact a measure to put small charter schools on a more level field in regard to property taxes.

Charter schools are small-scale actors that fill specific and unique needs in their respective communities. Charter schools educate only about 3 percent of all public students, and HJR 86 would impact only those that rent their facilities. As such, HJR 86 and HB 1360's fiscal impact on the state would be minimal, but the impact on these schools would be significant.

HJR 86 would not provide the constitutional grounds for a slippery slope

of similar leasing exemptions for other entities, as the issue it would be addressing is unique to schools in this particular situation. The bill would not grant an exemption for any use other than property needed for "educational purposes" that was "necessary for the operation of the school," creating a narrow universe of applicability.

OPPONENTS SAY:

HJR 86 would establish a constitutional precedent that would upend the long-standing practice of providing tax exemptions only to someone who owns land. The amendment would open the floodgates to similar measures, each seeking a tax exemption for discounting property for a noteworthy purpose.

Since time immemorial, tax exemptions have been tied to the owner of land. The scope and history of the rule is illustrated by the fact that public entities, including public schools, religious organizations, and nonprofits, all entities that have well-established tax exemptions under the law, do not receive or confer any tax exemption for leased property. If HJR 86 were enacted, it would give private schools, private universities, and potentially charter schools — depending on a still-unclear interpretation of Property Code, sec. 11.21(d) — a completely special and unique exemption that was unavailable to anyone else.

This would put the state on a slippery slope with regard to granting exemptions for leased, discounted space. If enacted, HJR 86 would invite similar legislation in future sessions creating similar leasing exemptions for public schools, churches, governmental entities, nonprofits, hospitals, etc. The Legislature would have trouble giving any of those groups a principled explanation for why they should not be granted the same allowance as private and charter schools.

In addition, the constitutional amendment and the enabling legislation would provide a fertile landscape for all manner of creative business arrangements and evasive practices to take root. It would be hard for an appraisal district to independently evaluate what a property owner claims to be fair market rent. There would be nothing keeping a property owner from using generous estimates of fair market rent to enjoy a larger tax exemption than is justified. Appraisal districts have little experience in evaluating the market value of such arrangements. They would not have an effective way to check abusive practices.

HJR 86 would allow legislation that encouraged practices that would end

up causing a significant loss of future revenue. This loss in revenue would represent a transfer of property taxes from the regular school district to the alternative school.

NOTES:

The enabling legislation for HJR 86, HB 1360 by Ritter, has been set for floor debate today on the House General State Calendar.

According to the Legislative Budget Board, the cost of publishing the proposed resolution would be $108,921.

SUBJECT: Rulemaking by state agencies

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Scott Turner, Vo

0 nays

1 absent — Taylor

WITNESSES: For — (*Registered, but did not testify*: Kathy Barber, NFIB Texas; Jon Fisher, Associated Builders and Contractors of Texas)

Against — None

BACKGROUND: The Administrative Procedure Act (Government Code, ch. 2001) governs rulemaking procedures for state agencies.

Sec. 2001.038 enables a person to file an action for relief in Travis County district court when it is alleged that an administrative rule issued by a state agency adversely affects that person.

DIGEST: CSHB 2851 would amend Government Code, ch. 2001, subch. B to specify that the rules adopted by a state agency would be required to fulfill a purpose established by the constitutional or statutory law governing that agency and would have to be within the agency's authority to adopt.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 2851 would make clear in statute that state agency rules must fulfill a purpose based on statutory authority. The interim study released January 13 by the Government Efficiency and Reform Committee found that state agencies do not always adhere closely enough to the Administrative Procedure Act in the rulemaking process, resulting in the adoption of rules that can exceed the intent of governing statutes. The bill would add clarifying language to the act to address these issues.

The bill would explicitly require state agencies to adopt only rules that fit within the intent of their governing statutes. Nowhere in state statutes are agencies specifically prohibited from going outside the bounds of the statutes that enable them. The language in the bill would codify something that is implied but not always adhered to by state agencies when they make their rules.

OPPONENTS SAY:

State agencies already are not permitted to adopt rules that operate outside the statutory law governing the agency. If an agency issues a rule outside the authority of its enabling statute, an individual adversely affected by that rule may file suit in district court and allege that the agency is operating outside of its statutory authority. Also, the requirement for a rule to fulfill a purpose is vague, and it is unclear how courts might interpret this language.

SUBJECT: Revising the permitting process for interbasin transfer of state water

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Ritter, Ashby, D. Bonnen, Callegari, T. King, Larson, Lucio, Martinez Fischer, D. Miller

0 nays

2 absent — Johnson, Keffer

WITNESSES: For — Martin Rochelle; *(Registered, but did not testify:* Larry Casto, City of Dallas; David Holt, Permian Basin Petroleum Association; Julie Klumpyan, Valero; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corp.; Steve Perry, Chevron USA; Dean Robbins, Texas Water Conservation Association; Stephanie Simpson, Texas Association of Manufacturers; CJ Tredway, Texas Oil & Gas Association; Julie Williams, Chevron USA Inc.*)*

Against —Myron Hess, National Wildlife Federation

On —Ron Ellis, Texas Commission on Environmental Quality; Ken Kramer, Sierra Club - Lone Star Chapter

BACKGROUND: Water Code, sec. 11.085 relating to interbasin transfers provides that no person may take or divert state water from a river basin and transfer it to another river basin without first applying and receiving a water right or an amendment to a permit, certified filing, or certificate of adjudication from the Texas Commission on Environmental Quality authorizing the transfer.

DIGEST: CSHB 3233 would amend the permitting process for interbasin transfers of surface water rights relating to the economic impact of the transfer, contested case hearings, time line of notice requirements, contractual transfers, and exemptions.

Economic impact. The TCEQ could grant an interbasin transfer only to the extent that the detriments to the basin of origin were less than the benefits to the receiving basin, as determined by the TCEQ. The bill would add that the TCEQ consider the following when making that

determination:

- the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply was requested, but not to exceed 50 years;
- factors identified in the applicable approved regional water plans;
- proposed mitigation or compensation, if any, to the basin of origin by the applicant;
- the continued need to use the water for the purposes authorized under the existing permit, certified filing, or certificate of adjudication, if an amendment to an existing water right was sought; and
- the information required to be submitted by the applicant.

The bill would delete a requirement that an interbasin transfer application include information projecting the effects of the interbasin transfer on user rates and fees for classes of ratepayers.

Contested case hearings. The bill would limit an evidentiary hearing for an interbasin transfer to the issues relevant under the section of the Water Code dealing with interbasin transfers.

Notice. The bill would amend the timeline for notice of application for an interbasin transfer to twice in a 30-day period, rather than once a week for two consecutive weeks.

Contractual transfer. The bill would specify that a transfer of water based on a contractual sale of water would be valid for the duration of the water supply contract and any extension or renewal of the contract.

Exemptions. CSHB 3233 would add retail public utilities to those entities that would be exempt from requirements for an interbasin transfer application if they provided service in an area that covered both basins.

Effective date. This bill would take effect September 1, 2013.

SUPPORTERS SAY:

Water Code, sec. 11.085, relating to the permitting of surface water interbasin transfers, was amended in SB 1 by Brown in 1997 to include many additional measures and some burdensome requirements. Prior to the passage of SB 1, more than 100 interbasin transfers were issued across the state, authorizing the transfer of water from water-rich areas to areas

where water was needed. The tremendous growth in the Dallas-Fort Worth Metroplex and the Houston metropolitan area came despite the historic drought of the 1950s and droughts since. This growth was possible in large part because of interbasin water transfers. Since the passage of SB 1, however, very few of these water transfers have been issued, due in large measure to several onerous provisions in the statute.

CSHB 3233 would amend certain provisions of the interbasin transfer statute to facilitate the orderly and efficient processing of future interbasin transfer applications by the Texas Commission on Environmental Quality (TCEQ), while maintaining a fair balance between basins of origin and receiving basins.

Economic impact. The bill would allow the TCEQ to rely on regional plans in determining the economic impacts of the permit. Many interbasin transfer permits are for regional projects involving many retail public water systems. Calculating the rate impacts for all of those systems can be challenging because "rates" implies the cost of treated water and many entities only sell raw water. It would be more efficient and effective for TCEQ to use the information they have already considered in the regional plans in evaluating the economic impacts of the transfer. To be consistent, the bill also would limit the factors considered by TCEQ when determining benefits and detriments of affected basins to those items already addressed in the regional plans.

Contested case hearings. CSHB 3233 would make it clear that issues to be assessed in any evidentiary hearing for an interbasin transfer be limited to those listed in statute. An application should not be subject to other provisions of the Water Code dealing with new appropriations of water if the interbasin transfer application only related to water supplies already permitted.

Notice. CSHB 3233 would provide for the same level of notice for a transfer but would allow notice to be issued in the more reasonable time line of twice in a 30-day period rather than once a week for two consecutive weeks. This would allow flexibility to applicants in providing notice, which can be prohibitive in large basins and rural areas.

Contractual transfers. When an interbasin transfer is done contractually the water right or authorization being transferred should reflect the term of the contract. It was potentially arguable that if there was an amendment or

change to the contract that extended the life of the contract, that the water right did not reflect that extension and remained only for the initial amount of time. The bill would clarify that if a contractual transfer of a water right was extended or renewed under the contract, the water right would also be extended or renewed.

Exemptions. The bill also would specify that certain interbasin transfer application requirements would not apply to proposed transfers located entirely within certain limited geographic territories that straddle river basin boundaries, including county boundaries, municipal boundaries, and retail water utility service area boundaries. This would enable smaller and more limited interbasin transfers to be authorized without expensive and lengthy application processing.

OPPONENTS SAY:

CSHB 3233 would limit the issues to be considered in determining benefits and detriments to affected water basins to certain considerations, including factors identified in the approved regional water plans. This could preclude a meaningful balancing of issues if a regional water plan did not adequately address the listed issues. It would be bad policy to allow a deficiency in water planning to restrict the issues eligible for evaluation during TCEQ's consideration of an interbasin transfer. In addition, even in the best regional water plan, the depth of consideration and discussion of issues, including things such as economic impacts and instream uses and water quality, would be much more general than would be appropriate for an evaluation of an individual interbasin application by TCEQ.

Limiting a hearing involving an interbasin transfer to only issues related to interbasin transfers could be inefficient. For example, at a recent TCEQ hearing on a proposed new reservoir, Lake Ralph Hall, the applicant sought authorization for the new reservoir and for an interbasin transfer for the water from the reservoir. The issues related to the interbasin transfer were considered in the same hearing as the issues under other provisions of the Water Code governing the permit to build the reservoir. CSHB 3233 would require that a similar situation would have to be handled in two separate hearings. This would increase the expense for TCEQ and for all parties, without any clear advantage.

There also could be interbasin transfer applications that involve existing water rights. Even in the case of a proposed transfer of water from an existing water right, there might be issues raised under other sections of

the Water Code. For example, the application might include a request for an increased rate of diversion or a new place of diversion, either of which would require a hearing pursuant to other provisions of the Water Code if an affected person asked for one. This would, again, be inefficient to require two separate hearings.

SUBJECT: Establishing deadlines for processing water rights applications

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Ritter, Ashby, D. Bonnen, Callegari, Keffer, Larson, Martinez Fischer, D. Miller

0 nays

3 absent — Johnson, T. King, Lucio

WITNESSES: For — Michael Booth; *(Registered, but did not testify:* Larry Casto, City of Dallas; Elizabeth Castro, Lyondell Basell; Mark Gipson, Devon Energy; Kinnan Golemon, Shell Oil Co.; David Holt, Permian Basin Petroleum Association; Julie Klumpyan, Valero; Annie Mahoney, Texas Conservative Coalition; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corporation; Steve Perry and Julie Williams, Chevron USA; Matt Phillips, Brazos River Authority; Dean Robbins, Texas Water Conservation Association; Stephanie Simpson, Texas Association of Manufacturers; CJ Tredway, Texas Oil & Gas Association*)*

Against — Myron Hess, National Wildlife Federation; Ken Kramer, Sierra Club - Lone Star Chapter; *(Registered, but did not testify:* Luke Metzger, Environment Texas; David Weinberg, Texas League of Conservation Voters*)*

On — (*Registered, but did not testify:* Ron Ellis, Texas Commission on Environmental Quality)

DIGEST: CSHB 3234 would amend the Water Code by creating a statutory water rights application process at the Texas Commission on Environmental Quality (TCEQ).

The bill would establish statutory deadlines for each stage of the water rights application process for both the applicants and TCEQ.

The bill also would limit to certain conditions TCEQ's ability to refer an issue regarding a water rights application to the State Office of

Administrative Hearings (SOAH). If TCEQ granted a request for a hearing, it would determine the number and scope of issues to be referred to SOAH. The hearing's duration would be limited to 270 days.

The bill would prohibit party status from being granted to anyone who did not request it from TCEQ prior to the issue being referred to SOAH.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3234 would establish a defined permitting process and a statutory timeline for issuing water rights permits, and would provide guidance to TCEQ when granting a contested case hearing.

Currently, the permitting process is carried out under TCEQ rules because there is no statute governing it. TCEQ is receiving an increasing number of complex water rights applications, and applicants and the agency alike have complained that the current permitting and hearing processes can drag on for an interminable period. This costly and inefficient system has created a backlog at the agency, as well as uncertainty for developing projects necessary to meet the state's future water needs. Given the demand that the drought and growth in population has placed on surface water, a defined and efficient permitting process would benefit all parties.

CSHB 3234 would improve the permit process for water rights by establishing definite time frames to which parties would have to adhere, while more clearly defining the steps in the process and the roles and responsibilities of each party. While the bill would set hard deadlines for each stage of the process for both the agency and the applicant, the bill also would include flexibility for both parties to extend deadlines if necessary and with good cause. Under the bill's deadlines, the entire permitting process should take no more than 900 days, give or take, before going to SOAH. This would be much faster than the five to 10 years it takes currently to process a water rights application.

The more stringent guidelines and timeframes also should weed out insincere permit applications early in the process, which would allow the agency to focus on the serious applications that need to move through the process quickly because business, industry, and other users were depending on the water.

The bill also would streamline the permitting process by qualifying who could be a party to a contested permit hearing and limiting the scope of issues that would establish a basis for a hearing. These limitations would not preclude the participation of a truly interested party, which likely would be engaged from the beginning. Instead, it would prevent non-vested parties from joining in a contest simply to stall an application.

OPPONENTS SAY:

CSHB 3234 would set unrealistic deadlines for TCEQ's review of water rights applications, especially in the case of complex water rights or large water projects. This could tie the hands of the TCEQ staff and result in inadequate review and premature issuance of a water right.

The water rights permitting process can be complex and lengthy. It is intended to balance the rights of landowners and existing water rights holders and the needs of the environment with the demands of others seeking to use the state's surface water for various purposes. As an increasing amount of the water in the state's river basins has been appropriated to various users, with many basins fully allocated or even over-allocated, careful scrutiny of any application for new or increased water rights becomes more important. This could tie the hands of the TCEQ staff and result in inadequate review and premature issuance of a water right.

With the prospect for a major expansion of state financial assistance for water projects, Texans need to be assured that where those projects involve surface water held in trust for the public, water rights applications are thoroughly evaluated to make sure that the interests of the public are being protected.

Efforts to streamline the permitting process could actually complicate efforts by landowners and others to be involved in a contested case hearing. The bill would place new limits on the length of a contested case hearing on a water rights permit and on issues that could be raised. It also would prohibit a person who did not request a hearing from being party to it. Even if a person did request a hearing, that person could not be a party unless that person requested a hearing on the specific issues referred to SOAH.

While an efficient permit application and review process is a legitimate goal, an equally legitimate goal is a process that provides a comprehensive

review of an application and consideration of all of its impacts, as well as a fair process that allows all truly affected parties to have their concerns heard and addressed to the extent possible. CSHB 3234 could undermine these necessary elements of the water rights amendment process.

OTHER OPPONENTS SAY:

Any issues with the water rights permitting process would be best served not by enacting legislation this session but by deferring this topic to an interim study, preferably with the assistance of a diverse but representative group of stakeholders who could put their expertise to work developing a balanced set of improvements to the process.

SUBJECT: Licensing foundation repair contractors

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 5 ayes — Smith, Kuempel, Gooden, Miles, Price

4 absent — Geren, Guillen, Gutierrez, S. Thompson

WITNESSES: For — Janet Ahmad, Homeowners for Better Building; Jim Dutton and Paul Wolf, Foundation Repair Association; John Fleming, Texas Mortgage Bankers Association (*Registered, but did not testify:* Kristi Ashley; Steve Bruno, Foundation Repair Association; Braxton Curry; Daniel Gonzalez, Texas Association of Realtors; Joe McCullough, Foundation Repair Association; Chelsey Thomas, Texas Association of Realtors; Brandon Vos)

Against — Susan Bryan, SA Structural Repair Solutions; Mike DeShazer, Brown Foundation Repair; Daniel Jaggers; Michael Orchard, CI Support Services; Vikrant Reddy, Texas Public Policy Foundation (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition)

On — William Kuntz, Texas Department of Licensing and Regulation; David Mintz, Texas Apartment Association

DIGEST: CSHB 613 would institute a licensing program for foundation repair contractors.

The bill would create the following four foundation repair license classifications:

1. Foundation repair company license, allowing the holder to engage in the business of foundation repair. An applicant would have to be an individual master license holder who was the sole proprietor of an insured company, or an insured business entity employing at least one master license holder and whose principal proprietors had passed criminal history background checks.

2. Master license, allowing the holder to engage in foundation repair

contracting. An applicant would have to be age 21 or older. He or she would be required to have completed at least 60 months of practical experience under the supervision of a master license holder during the past 10 years or to have equivalent experience.

3. Journeyman license, allowing the holder to repair foundations under the supervision of a master license holder. An applicant would have to be age 21 or older. He or she would be required to have completed at least 24 months of practical experience under the supervision of a master license holder during the past 10 years or to have equivalent experience.

4. Estimator license, allowing the holder to provide estimates or preparation for repair work under the supervision of a master or journeyman license holder. An applicant would have to be at least 18 years old.

Applicants for master, journeyman, and estimator licenses would have to pass an examination and a criminal background check. These licenses would be valid for one year, and the Texas Commission of Licensing and Regulation could impose application fees. To renew a license, a license holder would have to submit a renewal application, pay a fee, and show evidence of having completed continuing education requirements established by the bill.

Certain applicants could substitute formal education, related training in the course of military service, or engineering or construction work related to foundation repair while employed by a governmental entity. Out-of-state experience could count for some of the practical experience requirements required of other candidates, as determined by the Texas Department of Licensing and Regulation (TDLR).

Licensing requirements would not apply to:

- owners performing foundation repair on their own homes;
- engineers;
- certain maintenance people of residential or commercial properties;
- remodelers or contractors of single-family homes or duplexes, unless the remodeling consisted only of foundation repair work; home builders repairing foundations as part of the original construction process; or

- a person performing work on mobile home or the foundation of a nonresidential structure.

License holders not otherwise qualified would be forbidden from holding themselves out as engineers, architects, plumbers, or as someone licensed to work on structures in the liquefied petroleum gas industry. A license holder could not:

- fail to provide services already paid for;
- fail to honor terms of a contract;
- make fraudulent promises or knowingly misrepresent necessary services; or
- work on a foundation without any necessary permits from a local political subdivision.

The commission would:

- adopt rules to obtain and renew licenses;
- set minimum insurance requirements; and
- regulate advertising in the foundation repair industry.

License holders would still have to observe local ordinances, and political subdivisions could set stricter standards and continue requiring license holders to submit permit applications.

The bill would create the Foundation Repair Advisory Board, to meet at least annually. The board would provide advice and recommendations to the commission on technical matters including exam content, licensing standards, foundation repair standards, fees, rules, and continuing education requirements.

The board would consist of nine volunteer members appointed by the presiding officer of the commission and serving staggered six-year terms. Four members would hold foundation repair master licenses, and one would be a journeyman license holder. The commission's presiding officer would appoint the members as soon as practicable after the effective date of the bill.

The commission or executive director of TDLR could impose administrative penalties or sanctions. A person who violated license requirements, inappropriately employed an unlicensed person, or

submitted a false license application to the department could be charged with a class C misdemeanor (maximum fine of $500).

The commission would be able to take enforcement actions beginning September 1, 2014. The bill's licensing requirements would take effect September 1, 2014. TDLR would adopt rules to implement the bill by February 1, 2014. The department would begin accepting applications by March 1, 2014, and foundation repair contractors would need to obtain a license by September 1, 2014, after which TDLR would be authorized to take enforcement actions.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 613 would create oversight of an industry that sorely needs it. Other building trades are already regulated by the state, including electricians, plumbers, and air conditioning and refrigeration contractors. This bill would set up a licensing program similar to the ones the state uses to license those professions, administered by TDLR and guided by an industry advisory board.

Texas has unusually diverse soils which may expand or contract with moisture. These shifts may damage the foundation of a house, causing the whole structure of a home to crack. Each year, between 25,000 and 30,000 homes need repair done on their foundations, and the recent drought has exacerbated the problems caused by soil expansion and contraction.

This work currently is performed by an unregulated foundation repair industry. Improperly done foundation repair is not only costly; it can be permanent because usually a foundation can withstand only three attempts to repair it. The damage wrought by a botched foundation repair is significant enough to merit imposing competency standards for entrants to the industry.

CSHB 613 would provide independent quality control and, in an important step for consumer protection, it would require foundation repair companies to carry insurance. Finally, the bill would give TDLR the power to sanction bad actors with the imposition of penalties, which would give consumers recourse.

While some cities already require the registration of foundation repair companies and contractors, many smaller communities might not have this

capacity, nor would many Texans living outside city boundaries.

OPPONENTS SAY:

Texas imposes too many licensing requirements. This bill would impose high barriers to entry into the foundation repair industry, forcing members of the profession to pay fees, take an exam, submit to a criminal background check, complete continuing education, and demonstrate many years of practical experience. This could raise prices by artificially preventing competition, which would be bad for consumers. New and small businesses would find these costs difficult to bear.

Foundation repair is not akin to work in the electrical, plumbing or air conditioning and refrigeration industries. Those industries have major consumer safety issues, and improperly done work can endanger public health. Faulty foundation repair at most results in the cracking of the walls of a house, but does not endanger any lives. Furthermore, determining who is at fault for a bad foundation is not as simple as pinpointing who did bad electrical wiring, plumbing, or air conditioning.

OTHER OPPONENTS SAY:

The bill would not be effective because of the many licensing exemptions it contains. Among others, the bill would exempt the contractors building the foundation in the first place and remodelers who would still be allowed to perform foundation repair alongside other home improvements. The bill should close these loopholes and more tightly regulate the industry.

Foundation repair is already registered by some municipalities, and others could follow suit. The state should not impose requirements on local communities, which are capable of protecting local consumers.

NOTES:

According to the Legislative Budget Board, the bill would have no significant impact to general revenue in fiscal 2014-15. TDLR is projected to need 7 FTEs as a result of the bill, but the estimated $939,000 cost to the state is expected to be covered by license fee adjustments.

SUBJECT: The authority of a municipality to confiscate packaged fireworks

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

2 absent — Dutton, Anchia

WITNESSES: For — Joe Daughtry, Texas Fireworks Association; Chester Davis, Texas Pyrotechnic Association; Robert Guerra, Mr. G's Fireworks; Dianna Wildman; (*Registered, but did not testify:* Kathy Barber, NFIB Texas; Roy Callais; Eric Glenn, Texas Pyrotechnic Association)

Against — Andy Cardiel, City of Corpus Christi; (*Registered, but did not testify:* Lindsey Baker, City of Denton; Jeff Coyle, City of San Antonio; Shanna Igo, Texas Municipal League; T.J. Patterson, City of Fort Worth; Tom Tagliabue, City of Corpus Christi)

BACKGROUND: Local Government Code, sec. 342.003 allows the governing body of a municipality to prohibit or otherwise regulate the use of fireworks and firearms.

DIGEST: CSHB 1813 would state that a type A general law municipality was not authorized to confiscate packaged, unopened fireworks. For a home-rule municipality that governed fireworks, the bill would create an affirmative defense to prosecution for possession of fireworks brought under a municipal ordinance if:

- the defendant was operating a motor vehicle in a public place;
- the defendant was a passenger in a motor vehicle that was operated in a public place; and
- the fireworks were not in the passenger area of the vehicle, but were in a locked glove compartment, locked storage area, the trunk, or the area behind the last upright seat of a vehicle that did not have a trunk.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1813 would prevent unnecessary confiscation of fireworks from consumers where no violation of the law was intended. Many people buy fireworks legally in one municipality and then travel through a municipality that bans the possession of fireworks while on their way to another municipality where they could use them legally. The bill would not change the power cities have to ban use of all fireworks, including those without a stick, fin, or rudder. It also would not affect the governor's ability to ban use of fireworks during times of drought.

The bill would not increase any public safety risk because the fireworks would have to be packaged, unopened, and in a trunk or otherwise out of reach. When fireworks are packaged, unopened, and secured, they do not cause fires. Fireworks have caused very few, if any, wildfires in recent Texas history.

The defense to prosecution was developed in consultation with the fire department of Round Rock, among many cities with a high risk of fires due to drought. The bill only would allow fireworks to be safely transported through a municipality and would not authorize their use in a municipality that did not allow fireworks.

OPPONENTS SAY:

CSHB 1813 would preempt a municipality’s ability to enforce ordinances prohibiting fireworks and would increase the risk to public safety. Fireworks are one of the most dangerous products a consumer can purchase and their misuse can lead to fires and injuries. The governor’s ban on fireworks during a drought only applies to those fireworks with a stick, fin, or rudder, not all fireworks, and would not preclude the sale of certain types of fireworks during a drought.

SUBJECT: Criminal offenses for metal recyclers

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 9 ayes — Harless, Márquez, Isaac, Kacal, Lewis, Reynolds, E. E. Thompson, C. Turner, Villalba

0 nays

WITNESSES: For — Fred Persons, Harris County Sheriff's Office; Cathy Sisk, Harris County; (*Registered, but did not testify*: Thomas Baker, The Recycling Council of Texas; Alan Burrows, CenterPoint Energy; Randy Cubriel, Texas Port Recycling; Gary Gibbs, American Electric Power; Gilbert Hughes, American Electric Power; Scott Norman, Texas Association of Builders; Patrick Reinhart, El Paso Electric Co.; Jim Shapiro, The Recycling Council of Texas; William Yarnell, City of Houston)

Against — (*Registered, but did not testify*: Melanie Oldham)

On — (*Registered, but did not testify*: Rita Beving)

BACKGROUND: Occupations Code, ch. 1956 regulates metal recyclers. The Department of Public Safety (DPS) administers the chapter under sec. 1956.02. Local governments, under sec. 1956.003 may adopt rules, with limitations, that are more stringent than required by state law.

Occupations Code, sec. 1956.040 (a-2) establishes the penalty for violating sec. 1956.040 (a-1) as a misdemeanor with a maximum fine of $10,000. Violations include: operating with an expired registration certificate; offering to buy regulated material more than 15 straight hours a day or operating later than 9 p.m.; and failing to send to DPS a required electronic report with certain information, including contact information of the seller of the regulated material.

“Regulated material” is defined as aluminum, bronze, copper, brass, and regulated metals, such as those used in railroads, utilities and telecommunications.

DIGEST: HB 555 would define the class of misdemeanor for violating Occupations

Code, sec. 1956.040 (a-1) as class A misdemeanor (up to one year in jail and/or a maximum fine of $10,000).

The bill would add sec. 1956.204, General Criminal Penalty, and provide that an offense under that section was a class C misdemeanor (maximum fine of $500) unless the conduct that constituted the offense under that section also was an offense under another section in ch. 1956, in which case the person would be prosecuted under the other section.

SUPPORTERS SAY:

CSHB 555 would strengthen current law, close loopholes, and enhance the ability of counties to enforce laws and regulations designed to stop unscrupulous metal recyclers.

Thieves steal millions of dollars worth of metal and cause extensive damage, well in excess of the metal's value, at building sites, water district lift and pump stations, electric utilities and other businesses. In the unincorporated areas of Harris County, officials estimate that metal theft is causing about $1 million per month in damages. While existing law allows the thieves to be charged under various criminal penalties, unscrupulous metal dealers enable these thieves by ignoring local, county, and state law regulating their industry.

The city of Houston has increased its enforcement against metal recyclers, and the unscrupulous dealers have moved into the unincorporated areas of Harris County. Counties were granted additional authority over metal recyclers in SB 694, enacted by the 82nd Legislature in 2011. CSHB 555 would close enforcement loopholes uncovered by county officials.

The bill would clear up confusion about the misdemeanor penalty in existing law, which provides a fine up to $10,000, by classifying the penalty as a class A misdemeanor, thus strengthening the penalty by allowing up to one year of jail time in addition to the existing monetary fine. CSHB 555 would grant local governments specific authority to charge a person who violates metal recycling laws with a class C misdemeanor. This provision would allow counties to write tickets for minor violations of metal recycling laws.

A class A misdemeanor is an appropriate penalty for metal recyclers operating outside the law. They are, in effect, acting as fences for a criminal activity that is causing millions of dollars in damages. If unscrupulous recyclers were appropriately penalized, metal theft would

decrease significantly.

With the bill's passage, counties would have the added incentive and needed tools to work together to penalize unscrupulous metal recyclers.

OPPONENTS SAY:

The bill is not needed and would be ineffective if passed. Unscrupulous metal dealers simply would move to nearby counties where laws may not have been enacted or remain unenforced. Moreover, a one-year jail penalty is excessive for the violations specifically named in the bill. The state should not have a one-year jail term for a crime such as operating without a license or operating after 9 p.m. or more than 15 consecutive hours a day.

SUBJECT: Franchise tax credit for R&D activities performed with universities

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 7 ayes — J. Davis, Vo, Bell, Murphy, Perez, E. Rodriguez, Workman

0 nays

2 absent — Y. Davis, Isaac

WITNESSES: For — (*Registered, but did not testify*: Richard A. (Tony) Bennett, Texas Association of Manufacturers; Raif Calvert, Independent Colleges & Universities of Texas; Dana Chiodo, Raytheon; Bill Hammond, Texas Association of Business; Wendy Reilly, TechAmerica; Drew Scheberle, Greater Austin Chamber of Commerce; Carlton Schwab, Texas Economic Development Council)

Against — (*Registered, but did not testify*: Ted Melina Raab, Texas AFT)

On — Bruce Gnade, The University of Texas at Dallas; (*Registered, but did not testify*: Kevin Kavanaugh, Legislative Budget Board, Jennifer Specchio and Ed Warren, Comptroller of Public Accounts)

DIGEST: HB 953 would provide a franchise tax credit for entities performing research and development in conjunction with higher education institutions.

The bill would use definitions found in federal tax law for qualified research and qualified research expenses. A taxable entity, such as a technology company, would be eligible for a credit against its franchise tax liability if that entity contracted with a higher education institution for the performance of qualified research.

The franchise tax credit would equal 20 percent of the difference between:

- the total amount of qualified research expenses performed in the state in association with a higher education institution during a tax period; and

- 50 percent of the average amount of the same type of qualified research expenses performed in the state during the three previous tax years.

The taxable entity would have to prove the value of the franchise tax credit it claimed. The total tax credit claimed for a report, including any carryforward credits, could not exceed 50 percent of the total franchise tax amount due for the reporting period prior to the application of any other tax credits. A taxable entity eligible for a franchise tax credit exceeding this limitation could carry the unused credit forward to future tax periods, but credits could not be carried forward beyond 20 consecutive reports.

The tax credits could not be assigned in any way to another taxable entity, unless the other entity acquired all of the assets of the tax credit-holder in the same transaction.

Taxable entities would have to apply for the tax credit along with the filing of their franchise tax report for the same tax period. The comptroller would adopt rules and forms necessary to administer the franchise tax credit.

The bill would take effect on January 1, 2014, and would apply only to franchise tax reports due on or after that date.

SUPPORTERS SAY:

HB 953 would incentivize and encourage research and development in Texas. Research and development are activities that a company conducts with the intent of making discoveries that lead to the development of new or improved products and procedures. Texas currently is one of only seven states that does not offer a specific tax incentive for research and development. Where HB 953 differs from other bills before the 83rd Legislature is that it would offer a higher credit for research and development performed in conjunction with an institution of higher learning.

University-based research is important to innovation because early-stage research that is typically performed at universities serves to expand the knowledge pool from which the private sector draws ideas and innovation. Innovation drives economic growth, creating jobs and improving living standards.

Industry and higher education have been working together in the state for

some time. For example, Rice University and IBM recently partnered to build a first-of-its-kind supercomputer in Texas. The incentive proposed would promote mutually beneficial relationships, making the best minds available to business research and development, while providing opportunities and resources to institutions of higher education and their students. The bill would foster this relationship by allowing only those companies that partnered with Texas institutions of higher learning to claim a credit for research and development activities on their franchise tax.

OPPONENTS SAY:

Tax credits represent money that is diverted from the state treasury to a private purpose. Offering a credit is tantamount to the state writing a check to the beneficiary. In this case, there is no guarantee that the return will exceed the expense the state would assume.

HB 953 also would have an indirect impact of $10.3 million on general revenue funds in fiscal 2014-15 by reducing franchise tax funds flowing to the Property Tax Relief Fund, which was established by the Legislature in 2006 to offset reductions of school property taxes. Because revenue in the Property Tax Relief Fund is dedicated to public education, any reduction of revenue in the fund must be offset with general revenue funds.

NOTES:

According to the Legislative Budget Board, HB 953 would have a direct impact of revenue loss to the Property Tax Relief Fund of about $10.3 million for fiscal 2014-15.

SUBJECT: Defining work hours to participate in the municipal retirement system

COMMITTEE: Pensions — committee substitute recommended

VOTE: 5 ayes — Callegari, Alonzo, Branch, Frullo, Stephenson

0 nays

2 absent — Gutierrez, P. King

WITNESSES: For — Tom Hart, City of Grand Prairie; Robert Scott, City of Carrolton; (*Registered, but did not testify:* Jonathon Bazan, City of Irving; Tony Privett, City of Lubbock; Tom Tagliabue, City of Corpus Christi; Monty Wynn, Texas Municipal League)

Against — David Crow, Arlington Professional Fire Fighters Association; Chris Jones, Combined Law Enforcement Association of Texas; Randle Meadows, Arlington Police Association; Shannon Perez, SEIU Texas; *(Registered, but did not testify:* Lon Craft and Kevin Lawrence, Texas Municipal Police Association; Mike Higgins, Texas State Association of Fire Fighters; Scott Kerr, Plano Firefighters; Rene Lara, Texas AFL-CIO; Derrick Osobase, Texas State Employees Union)

On — David Gavia, Texas Municipal Retirement System

BACKGROUND: Current law requires municipal employees who work more than 1,000 hours in a year to be enrolled in the Texas Municipal Retirement System (TMRS).

TMRS administers retirement, disability, and death benefits for employees of Texas cities that voluntarily elect to participate in the system. Each of the 849 participating cities chooses a plan of benefits from various options. Each city's plan is funded separately through a combination of employee and employer contributions and investment earnings.

DIGEST: CSHB 626 would permit cities to adopt an alternative definition of "employee" that did not apply to police or firefighters.

It would allow cities to make employees working not more than 1,500

hours ineligible to participate in TMRS. The requirement would apply to employees hired after the effective date of the new city ordinance.

The bill would establish the earliest permissible effective date of such an ordinance. A city would be required to submit a copy of the ordinance to TMRS.

The bill would authorize the TMRS board of trustees to adopt rules limiting the frequency with which cities could change alternative definitions of employee.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Some part-time municipal employees who want to work more than 20 hours a week are prevented from doing so because taxpayers in a city cannot afford the employees' enrollment in the TMRS pension system.

The bill would allow cities to better manage their needs for seasonal workers, such as summer lifeguards and landscapers. Some of these part-time workers may be teenagers or retirees who do not desire to be enrolled in the retirement system but would like to be allowed to work more hours.

CSHB 626 simply would allow cities the option of adopting a new ordinance to allow those employees to work more hours without qualifying for the pension benefits. Twenty-two mid-size cities support the bill because of the flexibility it would give them to manage their seasonal workforce. Officials with those cities say the bill would allow them to offer more work and more jobs to citizens while controlling costs.

The Legislative Budget Board (LBB) reports that an actuarial review of the bill states that TMRS is actuarially sound according to the Pension Review Board guidelines and most likely would remain sound if CSHB 626 were enacted.

Police and fire personnel would continue to be considered full-time and qualify for pension benefits if they worked more than 1,000 hours a year. The bill would apply only to employees hired after a city adopted an ordinance.

The definition of employee is similar to one used in the Affordable Care Act, which sets a minimum of 1,560 hours for employees to qualify for

health care benefits.

OPPONENTS SAY:

CSHB 626 would provide incentives for cities to hire more part-time employees to avoid increasing their pension costs. This would be unfair to those workers who could be required to put in longer hours but not be rewarded with participation in the retirement system. Cities should not follow the "Walmart plan" of limiting workers' hours to just below the level needed to qualify for benefits.

The bill could have an adverse effect of requiring higher city contributions to TMRS, according to the LBB's actuarial impact statement. If fewer city employees pay into the fund, a city could be required to increase its contributions to meet amortization guidelines.

SUBJECT: Removing criminal consequences of possessing a switchblade knife

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

WITNESSES: For — Todd Rathner, Knife Rights; (*Registered, but did not testify:* Chris Howe)

Against — None

BACKGROUND: Under Penal Code, sec. 46.05, intentionally or knowingly possessing, manufacturing, transporting, repairing, or selling a switchblade knife, as defined by sec. 46.01, is a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). Dealing with a switchblade knife solely as an antique or curio is a defense to prosecution.

DIGEST: HB 1862 would remove the criminal consequences of possessing, manufacturing, transporting, repairing, or selling a switchblade knife.

SUPPORTERS SAY: HB 1862 would end the unnecessary prohibition on switchblade knives. A switchblade is no more dangerous than many legal knives and there is little evidence that switchblades represent a threat to the general public, yet they are singled out as illegal in Texas. They have been illegal in Texas since the 1950s, when they were outlawed in many states across the country due to unfounded fears. Many people own switchblades solely as an antiques or curios, which is a defense to prosecution. Since the terms "antique" and "curio" are not defined in statute, the legal status of these knifes is uncertain.

OPPONENTS SAY: Switchblades are dangerous weapons with few practical purposes and they should not be taken off the prohibited weapons list in Texas. The current law regarding switchblade knives works well and there is no reason to

change it. People who want to collect these knives solely as antiques or curios can do so with a defense to prosecution under current law. HB 1862 would unnecessarily end a safety law that is working well.

SUBJECT: State control of teacher appraisal criteria, curriculum, and assessments

COMMITTEE: Public Education — committee substitute recommended

VOTE: 8 ayes — Aycock, J. Davis, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

1 nay — Allen

2 absent — Deshotel, Dutton

WITNESSES: For — Barbara Cargill; MerryLynn Gerstenschlager, Texas Eagle Forum; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Monty Exter, The Association of Texas Professional Educators; Lloyd W. Graham, La Porte ISD; Lindsay Gustafson, Texas Classroom Teachers Association; Patti Janusaitis; Jeremy Newman, Texas Home School Coalition; Jonathan Saenz, Texas Values)

Against — (*Registered, but did not testify:* Anna Eastman, Houston ISD; Patricia V. Hayes, Stand for Children Texas; Anne Roussos, League of Women Voters of Texas; Sara Tays, Exxon Mobil Corp.)

On — Zenobia Joseph; (*Registered, but did not testify:* David Anderson and Criss Cloudt, Texas Education Agency)

BACKGROUND: The Common Core State Standards Initiative is a set of educational standards for kindergarten through 12th grade in English language arts and mathematics that states voluntarily adopt. The initiative was led by the National Governors Association and the Council of Chief State School Officers.

DIGEST: CSHB 462 would prohibit the State Board of Education (SBOE) from adopting common core state standards, defined as the national curriculum standards developed by the Common Core State Standards Initiative, as part of the state's required curriculum.

A school district could not use common core state standards to comply with the requirement to provide appropriate grade-level instruction. The

bill would prohibit a school district or open-enrollment charter school from being required to offer any aspect of a common core state standards curriculum.

The Texas Education Agency (TEA) would be prohibited from adopting or developing a state-mandated test based on common core standards. College advanced placement tests (AP) or international baccalaureate (IB) exams would be allowed.

CSHB 462 would prohibit the education commissioner from adopting or developing a recommended teacher appraisal process that included results of student performance on tests intended for national applicability or that were enacted federally. The bill would specify that college AP tests and IB exams could be included.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

When Congress created the U.S. Department of Education in 1979 it explicitly stated that the department must not increase federal government authority over education or diminish state and local responsibility for education.

Despite the intention of Congress and the fact that the 10th Amendment clearly reserves to states the responsibility of education, there has been an effort of the federal government to implement a national set of curriculum standards.

HB 462 would seek to remedy this overreach by making clear that the SBOE, a public school district, or an open-enrollment charter school could not adopt the common core state standards curriculum.

Texas has an elected SBOE that is accountable to voters and involves educators and the public in its curriculum decisions. The SBOE process is flexible enough to respond to any needed changes in the Texas essential knowledge and skills.

Texas standards are high and its students are succeeding, as reflected in rising graduation rates and record numbers of students taking AP exams. The state should not be brought down to lower national standards and a

politically correct curriculum.

OPPONENTS SAY:

CSHB 462 would interfere with local districts' flexibility to use any aspect of the common core state standards, including any lesson plans that might be relevant to the Texas curriculum.

The bill also could hinder school districts' ability to use student scores on national tests such as the SAT to evaluate teachers. Houston ISD said the bill would impact its teacher evaluation plan.

Texas students compete nationally, but CSHB 642 would prevent TEA from ever developing a test based on common core standards to see how our students compare to those in states across the country.

The federal government was not involved in the development of the common core state standards. States across the country collaborated with teachers, researchers, and leading experts to develop the standards, which have been commended by the U.S. Chamber of Commerce. The standards are designed to reflect the knowledge and skills that students need for college or the workforce.

Forty-five states, the District of Columbia, four territories, and the Department of Defense Education Activity have adopted the Common Core State Standards.

SUBJECT: Limiting full-contact football drills

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, Rodriguez, Villarreal

0 nays

WITNESSES: For — Eric Nauman, Purdue Neurotrauma Group; Sarah Naylor, Sports Legacy Institute; Blake Ripple; Lori Ripple; (*Registered, but did not testify:* Erin Garrison, Texas Brain Injury Alliance; Lauren Rose, Texans Care for Children; Paula Trietsch Chaney)

Against — (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition; Curtis Culwell, Texas High School Coaches Association; Ken McCraw, Texas Association of Community Schools; Don Rogers, Texas Rural Education Association; Howell Wright, Texas Association of Mid-Size Schools)

On — Hunt Batjer, UT Southwestern Medical Center; (*Registered, but did not testify*: David Anderson, Texas Education Agency)

BACKGROUND: The University Interscholastic League (UIL) was created by the University of Texas in 1909 to provide extracurricular academic, athletic, and music contests for elementary and secondary school students. For athletics, UIL organizes and facilitates region and state championships in such sports as football, basketball, baseball, cheerleading, soccer, and tennis.

In 2011, the 82nd Legislature enacted CSHB 2038, which requires school districts or charter schools to establish a protocol for dealing with students who could have sustained a concussion while participating in a school sponsored athletic event or practice.

DIGEST: CSHB 887 would add Education Code, sec. 33.096 to require the UIL to prohibit by rule a high school or middle school from allowing football team members to participate in full-contact drills for more than a total of one hour each week.

The prohibition would not apply to drills involving a player running:

- without opposition or resistance from another person or object;
- with opposition or resistance from a bag, shield, or pad regardless of whether a person was holding that object; or
- a player running at full speed against another player until the time of contact if both players remain on their feet and contact is made above the waist.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply beginning with the 2013-14 school year.

SUPPORTERS SAY:

CSHB 887 would help protect young football players in Texas from the damaging effects of traumatic brain injury. Research has shown that a young person's brain is still developing. Although the damage caused by powerful, crunching tackles has garnered most of the concern in the sport, student athletes often receive multiple hits to the head that can seem superficial and may go undetected but which could prove dangerous over time. Each hit sustained has a compounding effect and can produce long-term health problems, such as depression, aggression, Alzheimer's, and other disorders that show themselves long after the impact has occurred.

The bill would reduce significantly the pace of full-contact drills to give student athletes a respite from the collisions that can cause traumatic brain injury. The bill would allow some specific drills that involve minimal contact to continue. These drills are important for student athletes to improve their performance in the sport without placing them at great risk.

OPPONENTS SAY:

The mandate proposed by CSHB 887 would be difficult to enforce and would limit the control that coaches have over their football teams. Coaches have great care for their student athletes and know best how to set practice standards that are safe. This bill would remove that discretion.

SUBJECT: Offense for inappropriate actions by the early-voting ballot board

COMMITTEE: Elections — committee substitute recommended

VOTE: 4 ayes — Morrison, Klick, R. Miller, Simmons

3 nays — Miles, Johnson, Wu

WITNESSES: For — Wade Emmert, Dallas County Republican Party; George Hammerlein, Harris County Clerk's Office; Cheryl Johnson, Galveston County Tax Office; Ed Johnson, Harris County Clerk's Office; (*Registered, but did not testify:* Eric Opiela; Sheryl Swift, Galveston County Tax Office; B R "Skipper" Wallace, Republican County Chairs Association)

Against — Glen Maxey, Texas Democratic Party; Jill Moffitt, Harris County Democratic Party; (*Registered, but did not testify:* Cornelius (Connie) English Jr., United Transportation Union; James Gaston, AFL-CIO)

On — Keith Ingram, Texas Secretary of State, Elections Division

DIGEST: Under CSHB 1428 it would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for the presiding judge of the early-voting ballot board to knowingly:

- accept the ballot of an ineligible voter; or
- refuse to accept the ballot of a person whose acceptance for voting was required by the code.

The early-voting clerk would be required to report the commission of an offense to the county or district attorney having jurisdiction and to the secretary of state.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 1428 would provide a safeguard when an early voting ballot board acted in contradiction to Texas election law. Inappropriate acceptance and rejection of ballots during early voting is becoming more prevalent, but

currently there is no path to relief when this law is violated. The bill would seek to prevent any further illegal action and ensure that relief was available by creating an offense to penalize individuals who illegally accepted or rejected ballots and by requiring reporting when these offenses occurred.

The bill would solve a problem that exists throughout the state. There have been several examples of early-voting ballot board officials accepting and rejecting ballots inappropriately in various counties, and CSHB 1428 would help to solve this problem statewide. The fiscal note indicates that any financial impact of the bill would be insignificant.

The bill would create an offense only for acting in contradiction to the current law. Election Code, sec. 11.003 states that a person may vote only in the precinct in which the person resides, and election officials are under an obligation to follow this provision. The belief that a law should not exist or that a provision in the law should be different is not a valid basis for the failure to follow it, particularly when a civil right as important as voting is at stake. While some cite the results of a 6th circuit case in Ohio, that case does not apply to Texas.

OPPONENTS SAY:

CSHB 1428 would create an unnecessary new statewide offense to deal with a minor, localized problem. The recent issue the bill is intended to address concerned only six ballots, none of which affected the results of an election. The fiscal note indicates that the bill would result in unspecified increased costs to counties associated with investigation and prosecution of more Class A misdemeanors. The bill would have statewide effects when a more appropriate reaction to a local dispute is a local solution.

The bill would encourage disenfranchisement of voters who vote for the right candidates on the right ballot in the wrong building. A person who is eligible to vote and casts an appropriate ballot should have that vote counted. The building in which a person was standing when the ballot was cast should not be a basis for denying the exercise of this most important civil right. In a recent case in Ohio, a federal court held that provisional ballots cast in the right polling location but in the wrong precinct had to be counted.

SUBJECT: Exemption of pollution control equipment from property taxes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Martinez Fischer, Strama

0 nays

1 absent — Ritter

WITNESSES: For — David Hodgins, Tax Exemption School Coalition; Donald Lee, Texas Conference of Urban Counties; Cyrus Reed, Lone Star Chapter, Sierra Club; Jim Robinson, Texas Association of Appraisal Districts; Bennett Sandlin, Texas Municipal League; Terry Simpson, San Patricio County; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Ramiro Canales, Texas Association of School Administrators; Brad Domangue, Texas City ISD; Aurora Flores, Texas Association of Counties; Dominic Giarratani, Texas Association of School Boards; Mark Mendez, Tarrant County)

Against — (*Registered, but did not testify*: David Cagnolatti, Phillips 66; Steve Perry, Chevron USA; Chris Shields, Tenaska; Bill Stevens, Texas Alliance of Energy Producers)

On — James LeBas; Association of Electric Companies of Texas, Inc. (*Registered, but did not testify*: Chance Goodin and Donna Huff, Texas Commission on Environmental Quality)

BACKGROUND: Tax Code, sec. 11.31 defines the property tax exemption program for pollution control equipment. The Texas Commission on Environmental Quality (TCEQ) determines whether equipment is wholly or partly for controlling pollution. TCEQ issues a letter of determination to companies providing the agency's findings.

Companies must file for property tax exemptions with the chief appraiser of a county.

DIGEST: CSHB 1897 would amend the Tax Code to provide that a chief appraiser

could not accept an application for the pollution control equipment exemption and the property owner was not entitled to the exemption unless the property owner also provided TCEQ's letter of final determination with the application.

The owner of pollution control equipment would not be entitled to the exemption, or to relief for the denial of the exemption, for any tax year preceding the year the property owner provided the determination letter.

CSHB 1897 would apply only to applications for exemption filed with the chief appraiser on or after the effective date of the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1897 would clarify for both companies and county appraisal offices that pollution control exemptions could not be granted until the appraisal office received a TCEQ final determination letter from the applicant.

In the past, some counties have granted the exemption pending TCEQ's determination only to learn that the company did not receive the exemption. This has created concerns that a county could be put in the position of attempting to collect back taxes from a company when TCEQ determined that a piece of equipment or other property did not partly or wholly qualify for the exemption.

OPPONENTS SAY:

While the committee substitute resolved many of the opponents' concerns, CSHB 1897 could leave some companies unable to obtain the exemption even though they installed pollution-control equipment and their exemption application had been filed with the county.

SUBJECT: Establishing a pilot program for driver examinations

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

WITNESSES: For — Samuel Shotts

Against — Patrick Barrett, Driver Ed in a Box; Tom Pennington, Green Light Drivers Ed, Inc.

On — (*Registered, but did not testify:* Margaret Spinks, Texas Department of Public Safety)

BACKGROUND: Texas averages more than 225,000 new drivers each year. Each driver's license applicant under the age of 18 must take a comprehensive driver education course. For those age 18 and over, a driver education course is not required, but drivers must pass the standard written test given by the Department of Public Safety (DPS) as well as an on-road test.

DIGEST: CSHB 2320 would amend Transportation Code, ch. 521 and require the Department of Public Safety to establish a pilot program in which the department would designate commercial driver education schools to give the driving portion of the state's driver's license test.

DPS would create eligibility requirements a commercial driver education school would have to meet to participate in the program and would monitor schools that were part of the program to ensure that driving tests were conducted properly.

CSHB 2320 would require the department to record annually how many students used the program. The annual reports also would record the number of traffic incidents and citations involving drivers who obtained their licenses through the program and would weigh that data against the state's overall incident and citation rates. This reporting would be used by

the department to assess the program's effectiveness.

The bill would allow the department to charge driver education schools a fee to participate in the pilot program and would require fees from participating schools to cover the program's costs.

The program would run through September 1, 2017, at which time the Public Safety Commission, on the basis of a recommendation from DPS, could authorize the department to implement a permanent program.

The bill would take effect September 1, 2013, and the Department of Public Safety would adopt rules for the program by January 1, 2014.

SUPPORTERS SAY:

CSHB 2320 would help address the long lines and grueling wait times that are commonplace at many of the Department of Public Safety (DPS) offices that administer the state-required road test for applicants for a new driver's license.

By turning to qualified driver education schools to help administer this important behind-the-wheel exam, the department would provide the convenience that driver's license applicants deserve. Some people have waited several hours at DPS offices before being given the exam, while others have had to wait weeks for an appointment to take the test, according to recent news reports and public testimony. Creating a pilot program would bring relief to these offices so they could focus their attention on other services, such as driver's license renewals.

The state already allows driver education schools to administer the written exam that a person must pass to obtain a driver's license. This simply would be an extension of that kind of public-private cooperation. DPS would maintain oversight of the program and would monitor each participating school's progress. This information would be used to see if the program was successful and worth keeping. In addition, the pilot program would not have a significant fiscal implication to the state, according to the Legislative Budget Board. In fact, fees paid by participating schools would pay for the program's administration.

OPPONENTS SAY:

Although it is a good idea to call on the private sector to help administer the state-required road test for a driver's license, CSHB 2320 would not address a conflict of interest inherent in allowing a driver education school to measure the progress of an applicant who was also that school's

student. Also, the bill is unclear about how much it would cost a driver education school to participate in the program. The price for participation in the program should be set by the free market and not a government entity that could possibly set too high a fee and lock many schools out from helping administer the test.

SUBJECT: Increasing the amount authorized for local clean air initiative grants.

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 7 ayes — Harless, Lewis, Márquez, Reynolds, Thompson, C. Turner, Villalba

0 nays

2 absent — Isaac, Kacal

WITNESSES: For — James Sumner, Harris County Precinct 4 Constable Department; (*Registered, but did not testify*: Leonardo Coelho, Travis County; Julie Klumpyan, Valero; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corporation; Judith Parken, League of Women Voters of Texas; Steve Perry, Chevron USA; Mari Ruckel, Texas Oil and Gas Association; Adrian Shelley, Air Alliance Houston; Julie Williams, Chevron USA, Inc.; Daniel Womack, Texas Chemical Council)

Against — None

On — David Brymer, Texas Commission on Environmental Quality

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) administers the Low-Income Repair Assistance Program (LIRAP) in 16 Texas counties (Brazoria, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, Rockwall, Tarrant, Travis, and Williamson).

Revenue for LIRAP comes from a $6 fee paid by the residents in the Houston and Dallas-Fort Worth area counties and $2 by the residents of Travis and Williamson counties as part of their vehicle emissions test fee.

LIRAP funds two programs. AirCheckTexas Drive a Clean Machine offers financial assistance and incentives for qualified owners living in one of the 16 counties whose vehicles fail the emissions test or are at least 10 years old. LIRAP also funds the Local Initiative Projects (LIP), which are grants to the 16 counties (or their designee) that fund projects like vehicle emission testing fraud prevention and counterfeit inspection sticker

enforcement, traffic light synchronization, and other projects that can improve air quality. The LIP program is described in Health and Safety Code, sec. 382.220.

The LIRAP fund balance as of August 31, 2013 is estimated to be about $80 million. The program is expected to collect $43.1 million in fiscal 2014 and $44.6 million in fiscal 2015. CSHB 1 would appropriate $6.25 million, with $5.625 million allocated for Drive a Clean Machine and $625,000 for LIP.

DIGEST:

HB 2859 would increase the amount of funds that could be expended on the LIP program from the existing cap of $5 million to $10 million.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

HB 2859 would establish a framework for using fees collected from motorists living in regions of the state where air pollution is a problem to fund more projects that improve air quality. Increasing the maximum amount that could be appropriated to the LIP program from $5 million to $10 million would not make an appropriation but could prepare the state for future appropriations.

Some LIP programs have included law enforcement efforts to reduce the number of fraudulent, fictitious, or improperly issued state inspection stickers. Ensuring proper air emissions testing and removing fraud from the program could result in cleaner air.

Last year in Harris County, one of the 13 counties eligible to receive LIP funding, inspectors investigated nine suspected inspection stations and discovered that 20,416 out of 35,507 inspections were unlawful.

Some opponents may argue that LIRAP money is better spent helping low-income individuals repair or replace older, polluting cars. There would be sufficient money for all the various programs if the Legislature would not hold a large portion of LIRAP funds aside for budget certification purposes.

The change in the LIP funding ceiling would not require an appropriation, but simply allow one. Each Legislature would be able to decrease or increase the money allocated to LIP and change the LIRAP allocation between LIP and Drive a Clean Machine program, depending on the needs

at the time.

OPPONENTS SAY:

While enhancing vehicle inspection enforcement is important, the state could see more of a pollution reduction by paying drivers to trade in their older vehicles for cleaner models.

HB 2859 could result in money being shifted from Drive a Clean Machine to local law enforcement grants. Local governments could come to expect the money at the same level each year and build enforcement programs around the grants. This could create a bias toward appropriating money to local governments instead of directly to vehicle owners.

TCEQ would need to carefully monitor LIP grants to ensure they were going to projects that caught individuals cheating on air emission testing and were not aimed at fixing a wider problem with the entire vehicle inspection program, of which air emission testing is just one component.

OTHER OPPONENTS SAY:

HB 2859 would fail to address the fundamental problem of dedicated fees being diverted from LIRAP for budget certification. This type of budgetary gimmick is harming efforts to reduce air pollution in our major urban areas. The Legislature must address the problems with dedicated funds through the appropriations process as part of a truth-in-budgeting initiative.

SUBJECT: Filing deadlines for write-in candidate in elections

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Morrison, Miles, Johnson, Klick, R. Miller, Simmons, Wu

0 nays

WITNESSES: For — (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Jacquelyn Callanen, Bexar County, Texas Association of Election Administrators Legislative Chair; Dana DeBeauvoir, County and District Clerks Legislative Committee; Rosemary Edwards, Texas Republican County Chairmans Association; George Hammerlein, Harris County Clerk's Office; Glen Maxey, Texas Democratic Party; John Oldham, Texas Association of Election Administrators; Eric Opiela, Republican County Chairman's Association, Karnes County Republican Party)

Against — (*Registered, but did not testify:* Chris Howe)

On — Bill Eastland; (*Registered, but did not testify:* Keith Ingram, Texas Secretary of State, Elections Division)

BACKGROUND: Election Code, ch. 146 governs write-in candidacy. Under this provision, a write-in vote may not be counted unless the name written on the ballot appears on a list of write-in candidates. Candidates wishing to appear on this list must make a declaration of write-in candidacy, and the authority responsible for preparing the ballot must prepare this list and distribute it to the counting officers and election judges in the election. Write-in candidates may not withdraw their names from this list after the 67th day before election day.

Under Election Code, sec. 146.025, with certain exceptions, a declaration of write-in candidacy must be filed not later than 5 p.m. the 78th day before election day and not earlier than 30 days before the regular filing deadline. This deadline is the 75th day before the election if a candidate whose name is to appear on the general ballot dies or is declared ineligible fewer than three days before the filing deadline.

Sec. 146.054 governs filing deadlines for declaration of a write-in candidacy in a city election. The deadline for elections held on the date of a general election is the 74th day before election day. The deadline for a uniform election date other than a general election is the 71st election day before election day. The deadline for all other city elections is five days after the deadline for an application for a place on the ballot.

Sec. 146.083 governs filing deadlines for a declaration of write-in candidacy in a special election to fill a vacancy in the Legislature. This deadline is the same as the deadline for an application for a place on the ballot.

Election Code, sec. 144.006 provides deadlines for the filing of a declaration of write-in candidacy for office of a political subdivision other than a county or city. These deadlines are equivalent to those listed in sec. 146.054, except that the deadline for elections held on the date of a general election is the 78th day before election day.

Election Code, sec. 171.0231(d) governs the deadline for filing a declaration of write-in candidacy for county chair or precinct chair. The deadline is the fifth day after the date of the filing deadline for the general primary election.

Election Code, ch. 145 governs withdrawal, death, and ineligibility of candidates. Under sec. 145.032 a candidate may not withdraw from a general election after the 74th day before election day.

DIGEST:

HB 3101 would add Election Code, sec. 146.003 to specify that the filing deadline for an application for a place on the ballot also would be the deadline for a declaration of write-in candidacy.

The bill would repeal the following sections that govern current write-in candidate deadlines:

- sec. 146.025;
- sec. 146.054;
- sec. 146.083;
- sec. 144.006; and
- sec. 171.0231(d).

The bill would specify that the new write-in candidate deadlines under sec. 146.003 would also apply to:

- trustees of an independent school district;
- members of the governing body of a junior college district;
- board members of a hospital district; and
- members of the board of navigation and canal commissioners.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 3101 would ease the administration of elections by providing uniformity and consistency in the law. Write-in candidates have a later deadline than other candidates for withdrawing their names, which causes an unnecessary delay in the preparation of the write-in candidate list, and also delays the mailing of ballots to military and overseas voters.

Deadlines for declarations of write-in candidate are scattered and differ across the board, making it difficult and confusing for laypeople considering a write-in candidacy to determine when their deadline is. This difference in deadline requirements for write-in candidates also has resulted in strange logistical quirks wherein sometimes the write-in candidate filing deadline falls before the filing deadline for other candidates. The bill would solve the problems created by these inconsistencies by creating uniform deadlines throughout the Election Code.

OPPONENTS SAY:

HB 3101 significantly would alter the nature of the write-in candidacy. Such candidates often decide to declare their candidacy as a write-in candidate because of dissatisfaction with the other candidates in a race or because they encounter barriers to filing via the normal application process. Because of the common motivations behind write-in candidacy, these candidates merit extra time to be able to declare their candidacy. Giving write-in candidates the same filing deadlines as other candidates would reintroduce some of these barriers and defeat the idea behind write-in candidacy.

SUBJECT: Allowing for electronic administration of primary elections

COMMITTEE: Elections — committee substitute recommended

VOTE: 7 ayes — Morrison, Miles, Johnson, Klick, Miller, Simmons, Wu

0 nays

WITNESSES: For — Glen Maxey, Texas Democratic Party; Steve Munisteri, Republican Party of Texas; (Registered, but did not testify: Eric Opiela, Texas Republican County Chairman's Association, Karnes County Republican Party)

Against — None

On — (*Registered, but did not testify*: Keith Ingram, Texas Secretary of State Elections Division)

BACKGROUND: Election Code, ch. 172 governs primary elections.

Address where applications will be received. Sec. 172.022 requires the county chair to post notice of the address at which applications for candidacy will be received. The notice must be posted on the bulletin board of the commissioners court.

Certification of candidate names. Sec. 172.028 requires the state chair to certify the name of each candidate in writing and deliver the certification to the county chair in each county in which the candidate's name is to appear on the ballot. A copy of each certification would need to be made available, free of charge, to newspapers, and radio and television stations.

List of Candidates. Sec. 172.029 requires the state chair and each county chair to prepare a list containing:

- the name of each candidate who filed an application for a place on the ballot;
- the candidate's address; and
- the date on which the candidate filed the application.

The section also:

- prescribes rules for the format of the list;
- requires that it be delivered to certain parties no later than the 10th day after the deadline;
- provides rules if a candidate withdraws, dies, or is declared ineligible; and
- requires that the secretary of state retain each list until the day after the general primary election day.

Under sec. 127.056, the state and county chairs must make a supplemental list like the one provided by sec. 172.029 for candidates who file an application during the extended filing period. The list is subject to the same requirements as under sec. 172.029, except the delivery deadline is the seventh day after the extended filing deadline.

Drawing of candidate names. Sec. 172.082 requires the county chair to post notice of the drawing of candidates' names for the primary ballot. Sec. 172.084 requires the county chair to post notice of the drawing of candidates' names for a runoff ballot.

Notice of elected parties and county returns. Sec. 172.118 requires the county chairs to deliver written notice of those elected as party leaders to the state chair, county clerk, and secretary of state. The county chair is required to deliver county returns of a primary election to the state executive committee.

Reporting of precinct results. Sec. 172.124 requires county chairs to prepare a report of votes received in each precinct for certain offices and deliver it to the secretary of state.

Notation of voter's party. Sec. 172.125 requires the voter registrar to make notations on the list of registered voters beside each voter's name indicating the party primary for which the voter was accepted for voting.

DIGEST:

CSHB 3103 would amend Election Code, ch. 172 to allow for electronic compliance with several provisions.

Address where applications will be received. CSHB 3103 would require a political party to post notice of the address where applications would be received on the party's Internet website or at the location where the candidate filed for a place on the ballot.

Certification of candidate names. The bill would require the state chair's certification of the name of each qualified candidate under sec. 172.028 be made to the secretary of state, who would have to post the certified list on the secretary's Internet website. The requirement for providing copies to newspapers and radio and television stations would be repealed.

List of candidates. Data compiled on the list prescribed by sec. 172.029 would be electronically submitted to the secretary of state, who would maintain an online database of the information accessible by the county and precinct chairs of the party that submitted it. The secretary of state could prescribe the deadline for submitting this information. The secretary of state would have to be notified if a candidate withdrew, died, or was declared ineligible. The secretary of state would archive and keep available a list of candidates submitted under the section and prescribe rules for electronic submission and distribution. The bill would require electronic submission to this database of candidates applying during the extended filing period and notification that names had been added.

Drawing of candidate names. A party that maintained an Internet website would have to post the notice required under secs. 172.082 and 172.084 on its website and notify electronically all candidates who provided an e-mail address on their filing form.

Notice of elected parties and county returns. The bill would allow notice under sec. 172.118 and 172.119 to be delivered electronically, as long as the recipient adopted rules for electronic submission.

Reporting of precinct results. The bill would require the secretary of state to create and maintain an electronic system for submission of the report from county chairs required under sec. 172.124.

Notation of voter's party. For runoff primary elections, the voter registrar would have to "make appropriate notations to indicate" the preceding party primary for which the voter was accepted, rather than entering on the list a notation beside each voter's name.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUBJECT: Extension of exemption from inventory taxes for aircraft parts

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Gonzalez, Ritter, Strama

0 nays

2 absent — Eiland, Martinez Fischer

WITNESSES: For — Jacqueline Collier, Aviall, Inc; Michael Honkomp, Bell Helicopter Textron Inc; John Kennedy, Texas Taxpayers and Research Association; Chris Wallace, Greater Irving Las Colinas Chamber of Commerce; (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; Jeffrey Dodson, The Boeing Company; Stephanie Simpson, Texas Association of Manufacturers)

Against — (*Registered, but did not testify:* Windy Nash, Dallas Central Appraisal District)

BACKGROUND: Texas Constitution, Art. 8, sec. 1-j and Tax Code, sec. 11.251 exempt from ad valorem taxation "Freeport" property that is located in Texas temporarily. Eligible Freeport property includes goods, wares, merchandise, and other tangible personal property, including aircraft and aircraft parts used for maintenance or repairs by certified air carriers, and ores, other than oil, natural gas, and other petroleum products. To be eligible for the exemption, property must be acquired in or imported into Texas for export; detained for assembly, storage, manufacturing, processing, or fabrication; and shipped out of Texas no later than 175 days after acquisition or importation.

DIGEST: CSHB 3121would allow an appraisal district board to extend the date by which Freeport goods that were aircraft parts would have to be transported outside the state to up to 730 days after the property was imported or acquired. The extension would apply to the tax year in which it was adopted if that were before June 1; otherwise, it would apply to the next year.

The bill would take effect January 1, 2014, providing the corresponding

constitutional amendment, HJR 133 by Harper-Brown, was approved by voters. If HJR 133 were not adopted by the 82nd Legislature and approved by the voters, HB 3121 would have no effect.

SUPPORTERS SAY:

CSHB 3121 appropriately would allow an appraisal district board to extend the so-called "Freeport exemption" on inventory taxes in the state to certain aircraft parts to 730 days (two years).

This measure, which would be totally permissive for local taxing entities, would accommodate the particular nature of the specialized aircraft parts industry. Airplane parts are very expensive and, when needed, must be shipped to a customer with haste. Yet, since requests for special parts are rare, inventory often sits on the shelves prior to sale for much longer than in other industries. It is not unusual for parts to sit in a warehouse for 600 days.

Texas is one of a small number of states that assesses a property tax on inventory. Certain Freeport goods that are in the state for no longer than 170 days and meet other criteria under current law are exempt from this tax. While aircraft parts are granted a Freeport exemption under current law, the maximum period is of insufficient length for many airplane part manufacturers. For example, Aviall, which is a provider of aircraft parts and related support services located in Irving, Texas, is considering opening a second warehouse in Texas. The Texas location is one among a few sites around the country under review. Extending the Freeport exemption to two years could be a determining factor in Aviall's decision regarding where to open the new warehouse.

The proposed tax exemption in CSHB 3121 has all the major elements that the Legislature has looked to when deciding whether to grant similar tax exemptions — it would promote economic development, it would have a proven positive impact, and it would be totally at the option of the local government granting the exemption. To guard against any abuse, the bill also would cap the extension at 730 days before the parts would have to be shipped out of state. Measuring all proposed tax exemptions against these criteria would prevent the creation of a slippery slope caused by other industries requesting tax breaks that did not offer the same potential benefits to the state.

OPPONENTS SAY:

CSHB 3121 would extend a Freeport goods exemption for a certain group selling goods for certain purposes. Singling out one group for a tax

exemption, even for a meritorious purpose, raises issues of uniformity in taxation. If the extension was authorized for aircraft parts, similar industries that make specialized parts and have a high portion of idle inventory would seek a similar extension. The Legislature would have trouble giving similar industries a principled explanation for why they should not be granted the same extension as those in the business of selling aircraft parts.

CSHB 3121 would have an unknown fiscal impact on the state by reducing funds available for education funding formulas, as well as for local governments. The Legislature should not contemplate measures that reduce funds available for public education without first restoring the deep cuts it made to schools in 2011. Until these cuts are restored, any proposal to reduce revenue coming in to the state that is not absolutely necessary should be tabled.

OTHER OPPONENTS SAY:

Instead of granting extensions to the Freeport exemption, the Legislature should consider eliminating the antiquated and punitive inventory tax. Very few states have retained inventory taxes to this day, and the fact that Texas still assesses one puts businesses here at a competitive disadvantage. The state could greatly enhance its appeal to many inventory-heavy businesses by repealing this dated and unnecessary tax.

NOTES:

The Legislative Budget Board estimates the bill would create an unknown cost to the state through the operation of the school finance formula.

HJR 133 by Harper-Brown, the constitutional amendment necessary for HB 3121 to be effective, has been set for floor debate today on the constitutional amendments calendar.

SUBJECT: Contracts in workers' compensation provider networks

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Walle, Workman

0 nays

1 absent — Villalba

WITNESSES: For — Marci Conlin, Healthsmart Preferred Care II LP; Bruce Singleton, Coventry Workers' Comp Services; (*Registered, but did not testify:* Ron Cobb, American Insurance Association; Cathy Dewitt, Texas Association of Business; Sam McMurry; Debra Mincher, Texas Occupational Therapy Association; Lucinda Saxon, American Association of Preferred Provider Organizations; Joe Woods, Property Casualty Insurers Association of America)

Against — None

On — Debra Diaz-Lara, Texas Department of Insurance; (*Registered, but did not testify:* Amy Lee, Texas Department of Insurance-Division of Workers' Compensation)

BACKGROUND: Workers' compensation is a no-fault, state-supervised system established under the Workers' Compensation Act (Labor Code, Title 5, subtitle A) to pay the medical expenses of employees who are injured on the job and to compensate them for lost earnings. Texas employers who carry optional workers' compensation insurance get protection from unlimited legal liability for employees' on-the-job injuries, and workers receive timely compensation without having to sue their employers.

In 2005, the 79th Legislature enacted HB 7 by Solomons, which added ch. 1305 to the Insurance Code. This chapter allows workers' compensation insurance carriers to arrange medical care for injured workers through a network of providers certified by the Texas Department of Insurance (TDI).

TDI-certified provider networks often contract with "specialty networks"

to provide certain types of care, such as laboratory services, radiology, and physical therapy. Specialty networks may also provide administrative and billing services. In exchange for providing access to a larger pool of providers and helping certified networks meet certain adequacy standards, specialty networks access increased numbers of patients, and injured workers have access to a broader range of covered providers.

The development of specialty networks as a commonplace feature within the workers' compensation system has led to an increasing number of disputes between networks over responsibility for provider reimbursement. Areas of uncertainty within network contracts also have interfered on occasion with the TDI-Workers' Compensation Division's ability to collect certain information necessary for comparing networks and distributing appropriate fee guidelines.

DIGEST:

CSHB 3152 would revise certain contract terms for certified provider networks, specialty networks, and providers.

CSHB 3152 would require that if a specialty network served as an agent of the health care provider, the contract between them must specify the certified network's contract rate for health care services. It also must specify the actual amount of provider reimbursement after applying the provider agent's fee for providing administrative services.

The bill also would require that if the specialty network was an agent for a health care provider in the certified network, this relationship be disclosed in the specialty network's contract with the certified network.

CSHB 3152 would specify that a contract between a specialty network and either a health care provider or a certified network must comply with all other provisions in Insurance Code, ch. 1305, governing workers' compensation health care networks. A contract between a specialty network and a health care provider that complied with these provisions would reimburse the provider at the contracted rate. Otherwise, the provider would be reimbursed at the certified network's contracted rate.

The bill would prohibit a certified network or specialty network from requiring a health care provider, as a condition of its contract with the certified network, to use that same specialty network as its agent.

The bill would apply to contracts between a health care provider and a

certified network or specialty network that were entered into or renewed on or after the bill’s effective date. All contracts between certified networks and specialty networks would be governed by the bill's provisions beginning September 1, 2013.

The bill would take effect September 1, 2013.

SUBJECT: Revising licensing and certification requirements of nursing facilities

COMMITTEE: Human Services — committee substitute recommended

VOTE: 5 ayes — Raymond, N. Gonzalez, Fallon, Naishtat, Zerwas

1 nay — Scott Turner

2 absent — Klick, Sanford

1 present, not voting — Rose

WITNESSES: For — Gavin Gadberry, Texas Health Care Association

Against — None

On — (*Registered, but did not testify:* Dana McGrath, Department of Aging and Disability Services; David Thomason, LeadingAge Texas)

DIGEST: CSHB 3196 would increase the maximum license fees that the Health and Human Services Commission (HHSC) could require of nursing facilities licensed by the Department of Aging and Disability Services (DADS) to $375 from $250. It also would increase the per-bed fee to $15 from $10.

The bill also would increase from one year to three years the certification period for institutions meeting HHSC standards to provide specialized care for persons with Alzheimer's disease and related disorders. The HHSC commissioner by rule would stagger the expiration dates of certifications within the three-year period, prorating any certification fee as appropriate.

CSHB 3196 would allow DADS to require applicants constructing a nursing facility containing an allocation of Medicaid beds to provide a performance bond of $500,000 conditioned on the applicant completing the facility and receiving certification of the Medicaid beds within DADS' required time frame. The bill would detail minimum requirements of a performance bond. DADS would not be allowed to require that any specific insurer or broker issue a performance bond.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3196 would generate additional revenue for the state with only a modest increase in fees. The Legislative Budget Board calculates the bill would have an estimated positive net impact to general revenue of $809,186 in fiscal 2014-15. The bill would charge nursing homes the same effective amount as they had been paying before 2011, when the 82nd Legislature approved SB 7, which created the new three-year certification period but failed to raise the fee. Before then, nursing homes were paying a rate of $125 per year, so the $375 fee for three years is effectively the same.

The bill also would increase patient access to Medicaid-eligible nursing facilities. By allowing a performance bond, CSHB 3196 would give a financial incentive to applicants to complete on time new facilities that have received a quota of Medicaid-paid beds. A performance bond would ensure better predictability and consistency in Medicaid nursing facility bed allocation.

OPPONENTS SAY:

CSHB 3196 would be a burdensome governmental intrusion on nursing facilities. The bill would increase license fees over the level of the last two years, which would act as a tax increase on nursing home operators. Allowing DADS to require a performance bond of $500,000 would be an overly intrusive requirement that could deter the construction of needed nursing facilities.

SUBJECT: Adding substance abuse programs to a resource list for schools

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

WITNESSES: For — Katharine Ligon, Center For Public Policy Priorities; Gyl Switzer, Mental Health America of Texas; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference; Melody Chatelle, United Ways of Texas; Laurie Glaze, One Voice Texas; Greg Hansch and Catherine Weaver, National Alliance on Mental Illness Texas; Marilyn Hartman; Cynthia Humphrey, Association of Substance Abuse Programs; Merily Keller, Texas Suicide Prevention Council; Mandi Kimball, Children at Risk; Kathryn Lewis, Disability Rights Texas; Susan Milam and John Stuart, National Association of Social Workers/Texas Chapter; Josette Saxton, Texans Care for Children; Chuck Smith, Equality Texas; Andrea Usanga, Mental Health America of Greater Houston; Eric Woomer, Federation of Texas Psychiatry)

Against — (*Registered, but did not testify:* Barbara Harless)

On — Angela Hobbs-Lopez, Department of State Health Services

BACKGROUND: Health and Safety Code, ch. 161, subch. O-1 governs early mental health intervention and prevention of suicide. Sec. 161.325 requires the Department of State Health Services (DSHS) to provide and annually update a list of recommended best-practice-based programs in early mental health intervention and suicide prevention for implementation in public K-12 schools. DSHS must develop the list in coordination with the Texas Education Agency (TEA). Each school district may select from the list programs appropriate for implementation.

DIGEST: CSHB 3327 would add substance abuse prevention and intervention as a focus of Health and Safety Code, ch. 161, subch. O-1. The bill would add mental health promotion, positive youth development, and substance abuse prevention and intervention to the list of recommended best-

practice-based programs provided and updated by DSHS. The bill would require DSHS to develop the programs in coordination with regional education service centers, along with TEA. It would require that DSHS, TEA, and each regional education service center make the list of programs easily accessible on their websites.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3327 would provide school districts with an easily accessible list to identify recommended best-practice-based programs in the areas of mental health, substance abuse, and suicide prevention. Currently, districts sift through hundreds of different programs across many different websites. The bill would require TEA, DSHS, and the regional education service centers, the agencies with which districts most frequently communicate, to make the lists accessible and convenient on their websites. This would make selecting appropriate programs easier and more efficient for schools.

The current resource list does not include programs on substance abuse, which can be a serious problem among students. Schools would not be required to implement any of the programs. CSHB 3327 simply would give schools easier access to important programs that could help students.

OPPONENTS SAY:

The Texas school system should focus on the fundamentals of instructing students instead of dedicating resources to compiling lists of programs in areas not related to education and outside of the schools' core mission. With the state's system of public education already struggling under tight budget constraints, DSHS, TEA, and regional education services centers should not be required by law to work together to compile an even longer list of programs.

SUBJECT: Concealed handgun licenses for qualified retired peace officers

COMMITTEE: Homeland Security and Public Safety — favorable without amendment

VOTE: 8 ayes — Pickett, Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

1 absent — Cortez

WITNESSES: None

BACKGROUND: Penal Code, sec. 46.03 lists places where carrying firearms and certain other weapons are prohibited, including schools, polling places, a court, a secured area of an airport, among others. Under sec. 46.15, these prohibitions do not apply to certain categories of people, including honorably retired peace officers or federal criminal investigators who hold a certificate of proficiency and carry photo identification to verify that the officer or investigator retired honorably after at least 15 years of service.

Occupations Code, sec. 1701.357 allows certain honorably retired peace and federal criminal investigators to apply to take a weapons proficiency test. The officer or investigator must provide an affidavit stating that the officer retired honorably after at least 15 years of service, never had a license revoked or suspended during the term of service as a commissioned peace officer or investigator, and had no psychological or physical disability that would interfere with the officer's proper handling of a handgun.

Under 18 U.S.C. § 926C, a qualified retired law enforcement officer includes someone who separated from service in good standing after an aggregate of 10 years or more or separated due to a service-connected disability.

DIGEST: HB 3370 would amend Penal Code, sec. 46.15, to add qualified retired law enforcement officers to those exempted from offenses involving the unlawful carrying of a weapon in a place where weapons were prohibited if they held a certificate of proficiency under Occupations Code, sec.

1701.357.

It also would amend Occupations Code, sec. 1701.357(b) to allow an honorably retired peace officer to demonstrate weapons proficiency if the officer provided a sworn affidavit stating that before completing 15 years as a commissioned officer with one or more state or local law enforcement agencies, the officer had separated from employment with the agency or agencies and was a qualified retired law enforcement officer as defined by federal standards.

The bill would take effect September 1, 2013.

SUBJECT: Regulating use of a structural pest control business' name in advertising

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — T. King, Anderson, M. González, Kacal, Kleinschmidt, Springer, White

0 nays

WITNESSES: For — Gary Gillen, Texas Pest Control Association; *(Registered, but did not testify:* Donald Ward, Texas Pest Control Association; Dale Burnett*)*

Against — None

BACKGROUND: The Texas Department of Agriculture (TDA) is charged with regulating the structural pest control industry in order to protect the health and well-being of the public.

Occupations Code, sec. 1951.206, limits the authority of TDA to adopt rules restricting advertising unless that advertising is false, misleading, or deceptive. The limitations include that the rules may not restrict a person's advertisement under a trade name.

DIGEST: HB 3566 would amend Occupations Code, sec. 1951.206 to specify that TDA would not be prohibited from adopting rules regulating the use of the name of a business in an advertisement for a structural pest control business.

The bill also would change the scope of the section's applicability to a person subject to regulation, rather than regulated, by TDA.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.